

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Speier Analyst: LuAnna Hass Bill Number: SB 285

Related Bills: See Prior Analysis Telephone: 845-7478 Amended Date: July 10, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Relief From Joint And Several Liability On Joint Return

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended June 18, 2003.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 18, 2003, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would provide that if an individual receives relief from income tax liabilities under the federal innocent spouse provisions, that individual would also receive relief under the state innocent spouse provisions.

SUMMARY OF AMENDMENTS

The July 10, 2003, amendments resolved a policy concern as discussed in the department's analysis of the bill as amended June 18, 2003. Specifically, this amendment would provide that an individual would not be eligible for relief from tax liability under the innocent spouse provisions if a court already revised the same tax liabilities in a marriage dissolution.

For convenience, any existing concerns are provided below. In addition, the department has updated the "Fiscal Impact" statement, which is included below. The remainder of the department's analysis of the bill as amended June 18, 2003, still applies.

POSITION

Pending.

Board Position:

| | | |
|-----------------------------|------------------------------|---|
| <input type="checkbox"/> S | <input type="checkbox"/> NA | <input type="checkbox"/> NP |
| <input type="checkbox"/> SA | <input type="checkbox"/> O | <input type="checkbox"/> NAR |
| <input type="checkbox"/> N | <input type="checkbox"/> OUA | <input checked="" type="checkbox"/> PENDING |

Legislative Director

Date

Brian Putler

07/21/03

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- Current state law requires an individual seeking relief under the innocent spouse doctrine of a separate liability election, as discussed under "Federal/State Law," to request such relief within two years of the date the Franchise Tax Board (FTB) begins collection action with respect to the requesting spouse. Under this bill it is unclear if an individual who receives relief at the federal level through the separate liability election must still meet the two-year deadline for relief at the state level.
- This bill would provide an individual relief at the state level based on a federal determination. However, this bill does not provide FTB with the option to make a separate determination in instances where FTB discovers information that the federal determination is erroneous. FTB has access to numerous sources of taxpayer information and utilizes various on-line systems to investigate facts and verify statements made by the non-electing and electing spouses. Sources of information include credit reports, other state agency files (Employment Development Department, Board of Equalization, Secretary of State, Department of Motor Vehicles), various county records, and Lexis/Nexis.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ARGUMENTS/POLICY CONCERNS

Requiring the department to grant innocent spouse relief based on a federal determination would prevent the department from making a separate determination based on all the facts and circumstances available to the department. Such a requirement would effectively delegate the State's authority to make independent factual determinations in income tax matters to the Internal Revenue Service (IRS), which would be unprecedented.

Further, FTB would be required to grant relief on the basis of federal relief if the non-electing spouse *had an opportunity to participate* in the federal administrative or judicial proceeding that led to the granting of relief at the federal level. Generally, under federal law every non-requesting spouse has an opportunity to participate in innocent spouse proceedings. Therefore, the requesting spouse would be entitled to relief for state purposes and the non-requesting spouse would be denied the possibility of providing FTB information or participating in a state proceeding. The State's authority to make independent determinations in these instances would be delegated to the IRS. This problem could be minimized if the bill were amended to allow a non-requesting spouse to provide information indicating that he or she *did not participate* in the federal proceedings.

A spouse requesting relief under the state innocent spouse provisions must pay the tax on the income that they earned, managed, or controlled in order to qualify for relief. Often relief is denied for prior tax years where FTB records have been purged and the requesting individual is unable to verify tax was paid on their earned income for the year in question. Under this bill, if the IRS granted relief then FTB would be required to grant similar relief even though the department may be unsure or unable to verify that the requesting spouse has paid the appropriate share of tax.

This bill would allow FTB to make an independent determination of relief based on a federal determination if the non-electing spouse submits information showing 1) he or she did not have an opportunity to participate in the federal administrative or judicial proceeding that led to the granting of relief at the federal level; 2) the issues and liabilities were not the same; or 3) the requesting spouse was not entitled to federal innocent spouse relief. This would be contrary to the current statutory provision that requires the requesting spouse to prove his or her entitlement to relief. Consequently, the standard for innocent spouse relief in California would be different for applicants with a federal determination than it is for those that request relief without a federal determination.

Generally, FTB processes requests in less time than the IRS. On average, FTB provides a final determination within four to six months. In fiscal year 2001, it took the IRS an average of 12 months to process an innocent spouse case (GAO-02-588). Since the IRS determination is considered in FTB's investigation process, FTB's Innocent Spouse Program staff inquires about the electing spouse's IRS determination. Often the IRS determination is pending. Depending on the timing of the request for relief, the requesting spouse could receive a determination from FTB prior to receiving a federal determination.

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